Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of AT&T Inc. and	)	WT Docket No. 11-65
Deutsche Telekom AG	)	
	)	
For Consent To Assign or Transfer	)	
Control of Licenses and Authorizations	)	

PETITION OF COX COMMUNICATIONS, INC. TO CONDITION CONSENT

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Dated: May 31, 2011

SUMMARY

As a new entrant into the wireless marketplace, and an existing competitor of AT&T for voice, video and broadband services, Cox has a clear interest in this proceeding. If the merger is approved, the elimination of T-Mobile as a national, innovative, and most importantly, independent wireless competitor would significantly alter the wireless marketplace. AT&T's proposed acquisition of T-Mobile should therefore be scrutinized carefully to ensure that it serves the public interest and will not harm consumers or competition.

Contrary to AT&T's efforts to portray T-Mobile as competitively insignificant, T-Mobile has a long history of innovation and price leadership. The company was instrumental in bringing Android phones to the U.S. market and has aggressively deployed new HSPA technology in the AWS band. AT&T itself has acknowledged T-Mobile's influence in reducing prices, noting that T-Mobile's "significant reductions to its unlimited voice plans" caused AT&T and Verizon to shortly follow with their own significant price cuts. Eliminating T-Mobile as a national competitor would surely affect consumers' wireless service choices.

In addition to its potential impacts on the wireless retail market, AT&T's acquisition would eliminate T-Mobile as a potential national partner for smaller wireless companies and new entrants like Cox. Such partnerships – including roaming, MVNO and spectrum sharing arrangements – are critical in a national market characterized by strong economies of scale.

AT&T argues that its acquisition of T-Mobile would not harm competition because there are myriad other wireless providers, including many smaller carriers and new entrants, like Cox. For that argument to have any validity, smaller carriers must continue to have the ability to enter into reasonable partnership arrangements with remaining providers, particularly AT&T, Verizon or Sprint. Without such partnerships with national players, smaller carriers, and new entrants in

particular, would face significant challenges providing the very competition on which AT&T relies to support its merger arguments.

It is particularly important for a company like Cox to be able to partner with an independent wireless provider that does not also compete with Cox in other markets. As bundled service competitors to Cox in a number of geographic markets, AT&T and Verizon have less incentive than independent companies to facilitate Cox's entry into the wireless market. Cox currently has two national independent partner options – Sprint and T-Mobile. However, Sprint, with which Cox has an MVNO relationship, has stated concerns about the effect of this merger on its future viability. And the merger also would eliminate T-Mobile as a possible partner for Cox.

Given the potential impact of the proposed transaction on the partnership opportunities for small wireless carriers in general, and Cox in particular, it is unlikely that AT&T will bear its burden of demonstrating that the merger is in the public interest without the imposition of rigorous conditions that will help ensure the continued competitive viability of new and small wireless providers.

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PETITION OF COX COMMUNICATIONS, INC. TO CONDITION CONSENT

Cox Communications, Inc. ("Cox"), by and through counsel and pursuant to the Federal Communications Commission's ("Commission") *Public Notice* in the above captioned proceeding, hereby respectfully petitions the Commission to condition AT&T Inc.'s ("AT&T") proposed acquisition of T-Mobile USA ("T-Mobile").[1]

I. Introduction and Summary

As a competitor to AT&T across numerous markets, increasingly including wireless services, Cox has a clear interest in this proceeding. AT&T's acquisition of T-Mobile would eliminate a significant and innovative wireless competitor while creating the largest wireless company in the United States. T-Mobile has a history of innovation, price cutting and customer service that belies AT&T's claims that T-Mobile's elimination is no cause for concern. To the contrary, an acquisition of this scale must be closely examined to ensure that it serves the public interest and will not harm consumers.

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[1] Public Notice, *AT&T Inc. and Deutsche Telecom AG seek FCC Consent to the Transfer of Control of the Licenses and Authorizations Held by T-Mobile USA, Inc. and its Subsidiaries to AT&T Inc.*, WT Docket No. 11-65, (rel. April 28, 2011) ("*Notice*").

In addition to the potential horizontal effects for the merger, such as increased prices and reduced innovation, the merger could have vertical effects that could significantly alter the structure of the wireless marketplace. Small, regional wireless companies and new entrants like Cox rely on T-Mobile and Sprint – the two independent, national, facilities-based carriers – for roaming, Mobile Virtual Network Operator ("MVNO") relationships, network sharing and other wholesale wireless services. The merger, however, would eliminate T-Mobile and at the same time potentially weaken Sprint. Moreover, because AT&T already competes with Cox across a number of wired services and markets, it can be expected to have less incentive post-merger to facilitate Cox's entry into the wireless market than either T-Mobile or Sprint.

The loss of T-Mobile could thus undermine the very competition from smaller players that AT&T touts to alleviate concerns about competitive harm. Cox accordingly urges the Commission to consider carefully the implications of this merger on the ability of smaller wireless carriers and new entrants to find reasonable network partners, and to impose targeted conditions as may be warranted by the record.

II. The Elimination of T-Mobile as an Independent, National Carrier Would Hurt Competition and Consumers

The stakes in this merger are clear. AT&T's acquisition of T-Mobile would remove an innovative, price leading competitor from the market, with potentially adverse consequences for consumers and for competition. The loss would be keenly felt, notwithstanding AT&T's attempt to portray T-Mobile as competitively insignificant. This portrayal is at odds with T-Mobile's history of bringing innovative new technologies, services and pricing plans to the market. As just a few examples:

- T-Mobile was a founding member of the Open Handset Alliance that aided the development and deployment of the Android operating system,[2] and was the first carrier to offer an Android smartphone in the U.S. market. As the FCC recognized, the introduction of devices using Google's Android operating systems was a "notable development in smartphone differentiation."[3]

- T-Mobile played a "big part" in the ubiquitous deployment of wi-fi hot spots; was the first carrier to offer the Blackberry wireless email solution with integrated voice; and sold one of the first affordable, widely available "smartphones" – the "Sidekick" a qwerty-keyboard equipped phone with a color screen that enabled web surfing, email, and games.[4]

- T-Mobile has taken the lead in deploying the latest HSPA technology in the AWS band.[5] It is upgrading to HSPA+42, which promises downstream speeds of up to 42 Mbps. T-Mobile's network investment, over $12 billion in the past two years, now appears to be showing results.[6] According to a recent study, T-Mobile's network provides the fastest smartphone downloads, about 52 percent faster than the second place phone, which is offered by Sprint, prompting PC World to conclude that "with these laptop-and smartphone-based results, T-Mobile is proving to be a worthy challenger to its much larger competitors."[7]

- In 2009, T-Mobile introduced its "Even More Plus" pre-paid plan offering a lower monthly rate for customers that purchased unsubsidized handsets. As stated by the Commission, T-Mobile's plan "appears to be the first attempt by a national provider to change the incentives associated with device subsidies and service plan rates in a way to encourage mass market customers to use an unsubsidized

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[2] *See, e.g.*, T-Mobile History – the T-Mobile Timeline, http://www.t-mobile.com/Company/CompanyInfo.aspx?tp=Abt_Tab_CompanyOverview (viewed May 16, 2011); Brad Smith, *A Mobile Robot for the Wireless Internet*, WIRELESS WEEK, April 14, 2008 (according to T-Mobile USA's chief development officer, T-Mobile "joined the [open handset] coalition because it wanted to spur innovation in the development of applications and services and saw Android as the most open platform available."), available at http://www.wirelessweek.com/Articles/2008/04/A-Mobile-Robot-for-the-Wireless-Internet/ (visited May 16, 2001).

[3] Fourteenth Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66, FCC 10-81 (rel. May 20, 2010) ("*Fourteenth Report*").

[4] *See* Jason Notte, *5 T-Mobile Innovations, and 5 More We Lose*, THE STREET, available at http://www.thestreet.com;print/story/11060885.html (visited May 16, 2011).

[5] *See, e.g.*, *Mobile Broadband in the Americas: Momentum Building in the AWS Band*, Report prepared for the GSM Association by Global View Partners, May 2009, at 20, 22 (noting that "AWS product demand is accelerating on the back of T-Mobile USA's deployment" and that "T-Mobile is trailblazing to achieve rapid AWS subscriber penetration") available at http://www.gsmworld.com/documents/Momentum_Building_in_the_AWS_Band_Report(1).pdf.

[6] *See, e.g.*, Letter to Marlene Dortch, Secretary, FCC, from Russell H. Fox, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., WT Docket Nos. 10-133, 10-123 and 06-229, slide attachment at 7 (filed Dec. 2, 2010).

[7] *See*, Mark Sullivan, *4G Wireless Speed Tests: Which is Really the Fastest*?, PC WORLD (March 13, 2011), available at http://www.pcworld.com/article/221931/4g_wireless_speed_tests_which_is_really_the_fastest? (visited May 12, 2011).

> device."[8] Additionally, T-Mobile's "Even More" post-paid plan reset prices on tiered offerings at significant discounts to its legacy plans and "appears to have prompted Verizon Wireless and AT&T to narrow the price premium on unlimited service offerings."[9]

This last point is particularly important. AT&T claims in this proceeding that T-Mobile "does not exert strong competitive pressure on AT&T" and that its elimination would not harm consumers. T-Mobile, however, has exerted downward pressure on pricing, including on AT&T, as AT&T itself admitted in comments to the Commission last July. There, AT&T noted that "T-Mobile introduced significant reductions to its unlimited voice plans . . . and that AT&T and Verizon both responded shortly thereafter with their own 'significant' 'price cuts.'"[10] Even after the announcement of the AT&T merger, T-Mobile was offering new plans to undercut the pricing of its national rivals. For example, on April 13, 2011, T-Mobile launched a new plan for unlimited voice, text and data, up to 2 GB per month, for only $79.99.[11]

In addition to its history of innovation and price leadership, T-Mobile has also differentiated itself through customer service. It ranked first in 11 of the 13 JD Power Awards for Customer Care and 9 of the 12 JD Power Awards for Retail Customer Experience since 2004.[12]

In light of the foregoing, the Commission must assess carefully AT&T's claims that T-Mobile is an inconsequential competitor whose fortunes are on the wane. As recently as March 11, 2011, T-Mobile informed the Commission that it is "currently well positioned to serve

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[8] *Fourteenth Report*, ¶ 316.

[9] *Fourteenth Report*, ¶¶ 91-92.

[10] Comments of AT&T, *In the Matter of Mobile Wireless Competition*, WT Docket No. 10-133 (July 30, 2010) at 43 (quoting *Fourteenth Report*, ¶ 92).

[11] *See, e.g.*, Marguerite Reardon, *T-Mobile Undercuts rivals on "Unlimited" plan*, CNET NEWS, April 13, 2011, available at http://news.cnet.com/8301-30686_3-20053533-266.html?tag=mncol;txt (visited May 2, 2011).

[12] *See, e.g.*, Allie Fox, *T-Mobile Tops JD Power Customer Satisfaction Again! and again and again*, THE DROID GUY, February 3, 2011, available at http://thedroidguy.com/2011/02/t-mobile-tops-jd-power-customer-satisfaction-again-and-again-and-again/ (visited May 16, 2011).

its customers."[13] Indeed, the Commission would do well to heed AT&T's own advice regarding reading too much into the ups and downs in this market:

> In a competitive marketplace, one expects the comparative prospects of different providers to ebb and flow. Sprint has sustained well-documented problems in recent years related to its merger with Nextel, and T-Mobile has incurred challenges stemming from its decision to delay upgrading to 3G. Both providers have worked to recover . . . . T-Mobile has embarked on a major upgrade of its network to HSPA+. Customers benefit from this competition, and Sprint and T-Mobile are now seeing improvements in terms of customer satisfaction and net additions.[14]

III. Entry Into the National Wireless Marketplace

As AT&T's Public Interest Statement notes, Cox is a new entrant in the wireless industry, and has begun to offer its customers mobile voice and data wireless services.[15] Cox's incorporation of mobility into its suite of advanced services follows Cox's pioneering tradition of innovation and new service offerings. For example, almost two decades ago, Cox was awarded one of the first pioneer's preferences for a Personal Communications Service ("PCS") license based on Cox's spectrum efficient proposal to use cable television plant for connecting PCS microcells.[16] On the wireline side, in 1997, Cox became the first cable company to begin offering its residential customers traditional landline telephone services. Earlier, in 1993, Cox began serving commercial customers with business-class voice and data solutions. Indeed, Cox was among the first significant providers of facilities-based competitive telecommunications services, offering residential and business customers a true choice of telecommunications services providers for the first time.

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13 *See, e.g.*, Letter to Marlene Dortch, Secretary, FCC, from Thomas J. Sugrue, T-Mobile, WT Docket No. 11-18 and DA 11-252 (filed March 11, 2011).

14 Reply Comments of AT&T Inc., *In the Matter of the State of Mobile Wireless Competition*, WT Docket 10-133, August 16, 2010, at 10.

15 AT&T Public Interest Statement at 32.

16 *See* Amendment of the Commission's Rules to Establish New Personal Communications Services: *Tentative Decision and Memorandum Opinion and Order*, 7 FCC Rcd 7794, ¶¶ 12-15 (1992).

A. Cox's Wireless Market Entry to Date

Similar to its earlier landline telephony offerings, Cox's entry into wireless is providing Cox customers with more choice and with innovative service offerings. Rather than duplicate the offerings of other wireless carriers, Cox's wireless service gives consumers new features such as MoneyBack Minutes℠ (which provides cash back on customers' bills for unused minutes each month, rather than losing the unused minutes or rolling them over month-to-month with no monetary benefit). Cox also offers Bundle Benefits℠ – a free upgrade to customers who bundle two or more Cox services, where customers might gain a free premium channel or Movie Pak, a high speed Internet upgrade, free unlimited long distance with Cox Digital Telephone service, or earlier unlimited weeknight calling on Cox Wireless. Integration of the various Cox service offerings is also key, as Cox Wireless customers will soon be able to program their home DVRs, manage their Internet and wireless contacts, and review voice mail messages as text, all from their mobile devices.

Cox has launched as an MVNO using Sprint's wireless network in order to speed time to market, and has focused its efforts on launching its Cox Wireless branded services.[17] Cox is currently rolling out its Cox Wireless service across its cable footprint. Earlier this month Cox launched mobile wireless service across Rhode Island, in Cleveland, and in communities it serves in Connecticut.[18] This follows on Cox's previous mobile wireless service launches in Hampton Roads, Omaha, Tulsa, Oklahoma City and Orange County. Later this year Cox will introduce Cox Wireless in additional markets, bringing its wireless service to more than 50

[17] Cox has invested more than $500 million to acquire wireless spectrum and develop the business and human resources needed to provide wireless services.

[18] *See, e.g.*, P. Goldstein, *Cox Launches Wireless in Rhode Island, Connecticut, Cleveland*, FIERCEMOBILE CONTENT, May 17, 2011, available at http://www.fiercemobilecontent.com/print/node/17683 (visited May 17, 2011).

percent of the Cox Communications cable footprint.[19] These roll-outs reflect Cox's major commitment to mobility and wireless services.

B. The Daunting Challenges of Entry into the National Wireless Marketplace

Profitable entry into the wireless marketplace, particularly on a small, incremental scale, imposes daunting challenges and extraordinary costs, especially given the demands of consumers who expect a service with national reach. The Commission's *Fourteenth Wireless Competition Report* accurately described both regulatory and non-regulatory barriers that can delay entry for new wireless players and increase costs. In addition to spectrum acquisition, for example, regulatory barriers include the costs and delays of state and local tower siting requirements, which can affect the ability to timely erect new towers or to attach equipment on existing towers.[20]

Non-regulatory barriers can be equally if not more formidable. These include the costs of obtaining spectrum through auctions or leases; network deployment costs such as site acquisition and preparation; the costs of constructing or leasing individual sites; the costs of purchasing network equipment and backhaul; and the costs of interconnection and roaming.[21] Additionally, new entrants must develop and acquire "a portfolio of attractive wireless devices," which must then be marketed, sold and serviced to potential customers.[22]

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19 *Id*.

20 *Fourteenth Report*, ¶ 59.

21 *Fourteenth Report*, ¶ 63. The Commission has cited studies indicating that the average capital cost of deploying a single cell site can exceed $200,000 and that a new regional carrier would have to invest hundreds of millions of dollars. AT&T's Public Interest Statement also notes the difficulties in deploying cell sites:

> To add a site, a provider must locate a suitable and available location, arrange to acquire the site through purchase or lease, comply with regulatory requirements that necessitate extensive studies and consultation, apply for and obtain building permits and zoning approvals, contract with third-party vendors to purchase the needed equipment, construct the site and associated backhaul, and then integrate the site into the network. This process can literally take years. . . and is extremely costly.

AT&T Public Interest Statement at 46-47.

22 *Fourteenth Report*, ¶ 60.

Entry barriers are exacerbated by the fact that many aspects of the wireless marketplace are national (if not international). Wireless services typically must be available on a nationwide basis, even when provided by smaller, regional carriers. Consumers demand the ability to use their mobile devices anywhere, not just where their provider has built its own network or sells its phones. New entrants thus often strive to provide national coverage from the outset of providing service. As AT&T has explained:

> [T]he evidence shows that the predominant forces driving competition among wireless carriers operate at the national level . . . . As the Commission has recognized, rate plans of national scope, offering nationwide service at a single price without roaming charges, have become the standard in the wireless industry. These plans are offered by the large national carriers as well as regional carriers, such as Centennial and U.S. Cellular.[23]

In Cox's case, Cox intends to sell wireless services only where it provides its cable and broadband services. But its phones nonetheless must work everywhere, and its rate plans are national in scope and designed to be competitive with those plans offered by the national carriers. This national focus is critical for Cox to meet the demands of its customers who are likely to travel outside of their home markets and who expect a national service much like the bundled wireless offerings of AT&T (as well as Verizon).

The formidable entry barriers into the wireless marketplace also reflect the importance of scale in this industry. In fact, AT&T, already the second largest wireless provider, claims that it would benefit from the additional scale brought by its proposed acquisition of T-Mobile.[24] Nowhere do scale advantages manifest themselves more than in the purchase of end user devices and equipment. The ability to offer state-of-the-art smartphones and other devices is critical to

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[23] *See* AT&T Inc. and Centennial Communications Corp. for Consent to Transfer Control of Licenses, AT&T Public Interest Statement in Centennial Merger, filed November 21, 2008, WT Docket 08-246 at 28-29.

[24] *See, e.g.*, AT&T Public Interest Statement at 52 (claiming that "the combined company will also be able to take advantage of scale efficiencies by, for example, optimizing its retail and distribution network" and will "generate purchasing efficiencies when the combined company procures customer equipment such as handsets").

successful entry. Consumers demand the latest devices and their choice of wireless provider is increasingly based on the availability of such devices.[25] The very largest carriers have tremendous purchasing power that can be used to drive design and price. They also have the advantage of being able to enter into exclusive arrangements with handset manufacturers.[26] The Commission has accurately noted that a smaller carrier's or a new entrant's ability to compete can be adversely effected by exclusive handset arrangements that preclude competitors' access to highly sought after devices.[27] In the understated words of the Commission, exclusive handset arrangements "can create a kind of adjustment cost for potential entrants if lack of access to the exclusive technology delays the entry of potential entrants."[28]

Handset manufacturers generally limit exclusive arrangements to nationwide providers "that have large customer bases and extensive network penetration."[29] According to the Commission's analysis in the *Fourteenth Wireless Competition Report*, AT&T was by far the

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[25] *Fourteenth Report*, ¶66 (mobile devices "directly affect the quality of a consumer's mobile wireless experience and, hence, they factor into a consumer's choice of a wireless provider.")

[26] Victor Meena, the President and CEO of Cellular South and the current head of the Rural Cellular Association, aptly explained the advantages of scale in relation to the roll out of 4G, LTE services: "Given the enormity of the economic scale of each [of] AT&T and Verizon, these two carriers are the de facto 'market' for LTE devices and equipment that operate at 700 MHz. Outside of this 'market,' it is not economically feasible for any other carrier to obtain LTE equipment or devices to operate in non-AT&T or non-Verizon 700 MHz bands. To the extent competitive carriers can acquire LTE equipment and devices, the cost prohibits anything more than a fractional deployment and the ecosystem lags the AT&T Wireless and Verizon Wireless ecosystems by many months." Testimony of Victor H. Meena before the Senate Committee on the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer rights regarding *The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?* at 8, May 11, 2011.

[27] The Commission states that exclusive handset arrangements "fall within a class of contractual arrangements known as territorial restraints" that "are not per se illegal [but] raise competitive issues." *Fourteenth Report*, ¶ 316.

[28] *Fourteenth Report*, ¶ 66. Access to the latest handsets is particularly critical for Cox as it competes with the bundled offerings of AT&T, and Cox customers are accustomed to the latest video and broadband technologies that are routinely provided over Cox's state-of-the-art network. *See, e.g.*, M. Hachman, *Cox Launches App for DVR, Phone Management*, PCMAG.COM, March 18, 2011 (noting release of Cox Mobile Connect, an application for iPad, iPhone and Android that allows customers to manage their voice mail messages and program their VCRs), available at http://www.pcmag.com/article2/0,2817,2382214,00.asp, visited May 27, 2011; *Cox Delivers 50 Mbps Downloads to Lafayette, Louisiana*, COX NEWS RELEASE, April 1, 2009 (Cox is one of the first cable companies to roll out DOCSIS 3.0, which offers downloads of up to 50 Mpbs), available at http://cox.mediaroom.com/index.php?s=43&item=418, visited May 27, 2011.

[29] *Fourteenth Report*, ¶ 317.

largest user of exclusive handset arrangements.[30] Although their effects on innovation can be debated, exclusive handset arrangements are a current fact of life in the wireless marketplace that bestow substantial first mover advantages on those carriers able to command them.

IV. The Loss of T-Mobile as a Potential Partner to New Entrants and Smaller Carriers Would Harm Competition

Given the obstacles to entry into the national wireless marketplace, it is important for new entrants to be able enter into reasonable partnership arrangements with national wireless carriers for critical network inputs. In some instances, these partnerships enable the new entrant to offer nationwide services to its targeted customer base. In other cases, partnerships allow smaller carriers to offer attractive, reasonably priced handsets. And still other partnerships permit smaller players to pool spectrum resources and otherwise share in scale advantages.

For example, the ability to obtain reasonable roaming arrangements while a new carrier begins to build out its own network is one way in which a partnership can facilitate competitive entry. As the Commission has noted, "roaming on competitor's networks can offer entrants access to greater network coverage while they are deploying their own networks."[31] New entrants also may need to, or desire to, enter at least initially as an MVNO, which requires the ability to strike reasonable arrangements to utilize another carrier's wireless network. MVNO relationships can and do play an important competitive role, as AT&T itself emphasizes.[32] Partnerships can also involve other forms of sharing, such as radio access network or RAN sharing, spectrum sharing, or the ability to form buying cooperatives to create sufficient scale to purchase new mobile devices or network equipment in a timely and cost-effective way.

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30 *Id.* (finding that of 67 smartphone launches in 2008/2009, 32 were launched on an exclusive basis, nearly half of which were by AT&T).

31 *Fourteenth Report*, ¶ 63.

32 AT&T Public Interest Statement at 94.

The Commission must keep smaller carriers' need for partnerships front of mind as it reviews AT&T's proposed acquisition of T-Mobile. T-Mobile is a potential partner for new entrants or smaller providers, and as such plays a significant role in today's wireless marketplace. For one, as a national carrier, T-Mobile can offer a national footprint for roaming[33] or resale, which is critically important in light of customers' expectations of national coverage.[34] Equally important for a multi-service company like Cox, T-Mobile is an independent provider, which means that it does not compete with Cox in a host of other retail communications products. AT&T (and Verizon), on the other hand, are competitors with Cox for bundled voice, video and wireline broadband services in a number of geographic markets. AT&T and Verizon thus are less likely to support Cox's ability to compete and may, therefore, be less inclined than independent companies like T-Mobile or Sprint to facilitate Cox's entry into the wireless market. As the Commission has long recognized, large incumbent carriers like AT&T and Verizon have an incentive to discriminate against competitors.[35]

AT&T's acquisition of T-Mobile would leave but one national, *independent* wireless carrier, Sprint, with which to partner. As noted above, Cox currently has an MVNO arrangement with Sprint and is constantly in search of new opportunities with other potential partners. Sprint

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33 The merger would eliminate T-Mobile as an independent roaming partner. For GSM-based providers, AT&T's acquisition of T-Mobile, the only other national GSM carrier besides AT&T, the merger may effectively create a monopoly for the provision of nationwide GSM roaming services. Moreover, the hope that the transition to LTE would provide a unified wireless interface that would facilitate roaming has been diminished by the balkanization of the 700 MHz spectrum into an AT&T band and a Verizon band.

34 Last year, T-Mobile entered into an MVNO agreement with Simple Mobile, a provider of unlimited no-contract talk, text and data. Simple Mobile notes that an advantage of using T-Mobile's GSM network is that customers can bring their own phone and only need to purchase and activate a new SIM card. *See* P Goldstein, *Simple Mobile LLC Announces Wholesale Relationship*, FIERCEWIRELESS, March 25, 2010, available at http://www.fiercewireless.com/print/node/61193 (viewed May 16, 2011).

35 Memorandum Opinion and Order, *In the Matter of AT&T, Inc. and Bellsouth Corporation Application for Transfer of Control*, 22 FCC Rcd 5662, ¶ 23 (2007) (Where the applicants provide critical inputs "to various communications markets, we need to consider the potential vertical effects of the merger – specifically, whether the merged entity will have an increased incentive or ability to injure competitors by raising the cost of, or discriminating in the provision of, inputs sold to competitors.").

has expressed concerns that this merger may either weaken the company or prompt its acquisition.[36] AT&T's purchase of T-Mobile thus would not only eliminate another potential partner but could also undermine Cox's important existing arrangement with Sprint if the merger weakened Sprint or prompted its acquisition by another carrier less interested in continuing Sprint's current MVNO relationship with Cox.

AT&T posits that various small, regional carriers or new wholesale providers like Clearwire and LightSquared would provide sufficient competition to replace T-Mobile. Smaller carriers, however, have expressed their own strong concerns regarding this merger,[37] and it is too speculative at this time to place reliance on the possibility that either Clearwire or LightSquared will one day offer robust wholesale services over their own facilities-based, national wireless networks.

V. The Commission Must Carefully Examine the Merger's Vertical Effects and Adopt Appropriate Conditions as Necessary to Safeguard the Public Interest

A central part of AT&T's public interest showing is that T-Mobile's elimination as an independent provider would be competitively insignificant since various small, regional or new entrants would ensure sufficient competition in discrete local markets post-merger. AT&T bears the burden of demonstrating the validity of this argument and the Commission must carefully review the evidence that will be provided in the record. For the argument to be the least bit persuasive, the Commission must be convinced that smaller carriers would continue to have the ability to enter into reasonable wholesale partnership arrangements with remaining providers,

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[36] *See* Juliana Gruenwald, *Senate Hearing on AT&T Mobile Merger Focuses on Competition*, NATIONALJOURNAL.COM, May 11, 2011 ("The CEO of Sprint told a Senate panel Wednesday that if the AT&T-T-Mobile USA merger is approved, his company will have a tough time surviving and could be a target for a takeover."), available at http://www.nationaljournal.com/tech/senate-hearing-on-at-t-t-mobile-merger-focuses-on-competition-20110511?print=true (viewed May 20, 2011).

[37] *See*, *e.g.*, Testimony of Victor H. Meena before the Senate Committee on the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer rights regarding *The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again?*, May 11, 2011.

particularly AT&T, Verizon or Sprint. Without such partnerships, smaller carriers, and new entrants like Cox in particular, would have little if any ability to constrain AT&T's behavior, fatally undermining AT&T's reliance on competition from these carriers to support its merger arguments.

It is unlikely that AT&T will bear its burden, at least not without the imposition of rigorous conditions that will help will ensure the continued competitive viability of new wireless providers.

CONCLUSION

In light of the foregoing, Cox urges the Commission to carefully scrutinize AT&T's proposed acquisition of T-Mobile and impose such conditions as the record may warrant to ensure that smaller carriers and new entrants have the ability to enter into reasonable partnership arrangements.

Respectfully submitted,

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By ___________/s/___________________________

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May 31, 2011

CERTIFICATE OF SERVICE

I, Derek Teslik, an attorney at the law firm of Dow Lohnes PLLC, certify that on this 31st day of May 2011, I caused the foregoing Petition of Cox Communications, Inc. to Condition Consent to be served by electronic mail, on the following:

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